(Spl.-H.C.A.S.C.D., 78-e)

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI, GOA.
APPELLATE SIDE

DISTRICT :

SECOND APPEAL NO. 17 OF 2002.

Office Notes, Office Memoranda of Quorum, appearances,Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. Joseph Vaz, Advocate for the appellant.

Mr. Sudin Usgaonkar, Advocate for respondents No. 1 to 4, 6, 8 to 13, 7(a) and (b).

CORAM: B. H. MARLAPALLE, J.

DATE : 30th September, 2004.

P.C. :

Heard Mr. J. Vaz, Ld. Counsel for Appellant and Mr. S. Usgaonkar, Ld. Councel for Respondent No. 4 and some other Respondents i.e. 1 to 3, 6, 8 to 13, 7(a) and 7(b).

This Second Appeal arises from the decree passed by the Ld. II Addl. District Judge at Panaji on 3.11.2001 in Regular Civil Appeal No. 77/99.

Special Civil Suit No.17/79 was filed by present respondents for partition and though in para 2 of the plaint, the suit property was described as "Gorbat Odacodil alisa Sappre Gorbat com Temouli alias Sapre Gorbat Odacodil Temculi" (hereinafter called the suit property) described in the Land Registration Office of Ilhas, under No. 4278 of L B 11 new and in the Revenue Office under Nos. 715 and 213. The said property was shown in the Government cadastral plan under No. 246. However it was clear in the plaint itself that the partition claimed was in respect of share of Smt. Aixabi.

In para 10 of the plaint, the plaintiffs had specifically pleaded that one fourth of the suit property belonged

to Plaintiff Nos. 1 to 9, one fourth of the suit property belonged to Plaintiff Nos. 10 to 13, one fourth of the suit property belonged to Plaintiff Nos. 3 and 4 and 14 to 17 and the remaining one fourth to the defendants. In the written statement , the defendants have not at all denied para 10 of the plaint. In fact no averment at all is made by the defendants with reference to para 10 of the plaint. This means that averments in para 10 of the plaint are admitted. Even otherwise, admittedly, the matriz certificate of matriz nos. 715 and 213 also mentions the shares of four sons of Kazi Mohamad Patchamian as one fourth each. The defendants had contended that upon the death of Kazi Mohamad Patchamian inventory took place on 20.12.1894 in which 50% of properties were alloted to his wife Aixa Bi and 50% to his 4 sons. On the other hand the Plaintiff had stated in para 4 of the plaint that entire suit property was alloted to Aixa Bi in those Inventory

Proceedings. The defendants had not denied this fact in the written statement. The Inventory Certificate is on record at Exh. 69. The suit property has been alloted to Aixa Bi. The question of determination of shares of 4 children of Aixa Bi in an inventory, upon her death was not necessary and redundant procedure relating to delay as was held by this Court in 2000 (2) Goa Law Times 539 as noted by the Lower Appellate Court. Under such circumstances it was an error of law commited by Trial Court. Special Civil Suit No. 17/79 was not maintainable. The Lower Appellate Court stepped in and corrected this grave error. While allowing this appeal, the order and decree passed by Trial Court was quashed and set aside and Special Civil Suit No. 17/79 was restored to the file of Trial Court and it shall proceed further on its merits. The lower appelllate court has not passed any decree and it has been left to the decision of the Trial Court.

Mr. Vaz, Ld. Counsel for the appellant invited my attention to the multifarious suits between the parties like Special Civil Suit No.90/75, Regular Civil Suit No.105/96, Regular Civil Suit No.6/97 and Special Civil Suit No. 38/97. The pendency of these suits and whether it has any bearing on the trial of the instant suit are the issues to be gone into by the trial court while deciding Special Civil Suit No. 17/79 and rejection of Civil Suit on preliminary point was illegal.

Under these circumstances, this Second Appeal does not involve any special substantial question of law.

It is hereby dismissed in limine.

B. H. MARLAPALLE, J.

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